

STATE OF MICHIGAN
COURT OF APPEALS

ALTMAN MANAGEMENT COMPANY,

Plaintiff-Appellant,

v

DEPARTMENT OF TREASURY,

Defendant-Appellee.

UNPUBLISHED

April 10, 2001

No. 216912

Tax Tribunal

LC No. 00-239884

Before: Wilder, P.J., and Smolenski and Whitbeck, JJ.

PER CURIAM.

Plaintiff appeals as of right from the Tax Tribunal's opinion and order granting summary disposition to defendant. The Tax Tribunal held that it lacked jurisdiction in this matter because plaintiff did not file its petition within the time provided by statute. The crux of the issue before this Court is whether defendant gave plaintiff proper notice of a final assessment regarding a single business tax deficiency. We conclude that it did so, and therefore affirm the Tax Tribunal's decision.

Defendant originally maintained an East Lansing address on file for plaintiff, and it mailed official documents to that address as late as October 3, 1995. On October 18, 1995, defendant received one of plaintiff's single business tax returns. On that return, plaintiff's East Lansing address was crossed out and an address in Bethesda, Maryland, was written in its place. Defendant treated the filing of this return as a request to change plaintiff's address. Thereafter, defendant sent a copy of the final assessment to plaintiff at the Maryland address by certified mail, but without a return receipt. The postal service did not return the mailing to defendant, and plaintiff did not receive it.

On July 23, 1996, defendant mailed a copy of a state tax lien, for nonpayment of the assessment, to the Maryland address. Plaintiff received that mailing, which prompted it to request a copy of the final assessment. On September 10, 1996, plaintiff filed a petition with the Tax Tribunal, contesting the final assessment. The Tax Tribunal granted defendant's motion for summary disposition, ruling that it lacked jurisdiction to hear the matter because plaintiff's petition was not filed within thirty-five days from the date on which defendant issued the final assessment. Plaintiff appeals from that decision, arguing that the filing deadline should not apply because it did not receive proper notice of the final assessment.

Michigan's Revenue Division Act (RDA) governs plaintiff's petition for review of defendant's final assessment. The RDA requires defendant to provide a taxpayer with a copy of a final assessment, including a statement advising the taxpayer of its right to appeal the assessment. MCL 205.21(2)(f); MSA 7.657(21)(2)(f). The RDA also provides that such notice "shall be given either by personal service or by certified mail addressed to the last known address of the taxpayer." MCL 205.28(1)(a); MSA 7.657(28)(1)(a). The issue we must decide on appeal is whether defendant complied with the RDA by sending plaintiff the final assessment at its "last known address." The Tax Tribunal relied on this Court's decision in *Bickler v Dep't of Treasury*, 180 Mich App 205; 446 NW2d 644 (1989), to hold that defendant did so. On appeal, both parties contend that the *Bickler* decision supports their respective positions.

In *Bickler*, the defendant sent a copy of a final assessment to an address that the plaintiff had not used for several years. *Id.* at 207-208. The postal service returned the notice to the defendant, marked "undeliverable." *Id.* at 208. After the expiration of the appeal period, the defendant sent a notice of state tax lien to the plaintiff at the same address, even though defendant was on notice that the address was not current. *Id.* The postal service forwarded the notice of state tax lien to the plaintiff at his new address. *Id.* Upon receiving that notice, the plaintiff promptly appealed the defendant's final assessment. *Id.* The Tax Tribunal granted defendant's motion for summary disposition, ruling that it lacked jurisdiction over the matter because the plaintiff's appeal was untimely. *Id.* at 208-209.

On appeal, the defendant argued that it sent the final assessment to the plaintiff's "last known address," as required by MCL 205.28(1)(a); MSA 7.657(28)(1)(a). This Court disagreed, noting that the defendant's files contained the plaintiff's state income tax form, which listed the plaintiff's current address. Therefore, the previous address on file with defendant was not the taxpayer's "last known address," and defendant was required to search its files for updated address information:

A mailing of notice by a revenue commissioner to an old and inaccurate address does not constitute compliance with a statute requiring a mailing to "the last known address" *where a current address exists in the department's files as a result of the subsequent filing of a tax return.* [*Id.* at 210 (emphasis added).]

Ultimately, this Court reversed the Tax Tribunal's decision in *Bickler*, holding that the defendant had violated the plaintiff's right to due process because it had failed to give the plaintiff notice of the final assessment "in a manner reasonably calculated under all the circumstances to apprise petitioner of the decision and to afford him an opportunity to be heard." *Id.* at 211.

We agree with the Tax Tribunal that the *Bickler* opinion supports defendant's actions in the present case. If defendant had followed the procedure that plaintiff now advocates, i.e., ignoring the change of address marked on plaintiff's tax return, then defendant would have violated the *Bickler* rule. Instead, defendant examined its files, updated its records to reflect a change of address marked on a properly filed tax return, and mailed the final assessment to the new address. Defendant can not be faulted for promptly recognizing a change of address marked on a state tax return.

Plaintiff argues that defendant should not have accepted at face value the change of address marked on the tax return, but should have investigated the matter further to determine who changed the address and what their intention was in doing so. We disagree. Defendant should be entitled to rely on the address clearly marked on a properly filed tax return. Further, plaintiff's argument ignores the fact that defendant sent a confirmation notice to the Maryland address, notifying plaintiff that it had changed plaintiff's address and asking plaintiff to notify defendant if that change was not intended. Defendant received no response to that notice, and had no reason to believe that plaintiff had not received either the final assessment or the confirmation notice. Even if defendant had some duty to investigate the change of address, we believe that it complied with that duty by mailing the confirmation notice.

Plaintiff next argues that, even if defendant did properly mail the final assessment to the Maryland address, it should have also mailed the document to plaintiff's Michigan address. We disagree. The RDA requires defendant to provide notice by certified mail addressed to the taxpayer's "last known address." MCL 205.28(1)(a); MSA 7.657(28)(1)(a). The statute does not require the department to provide notice to every address it has on file for the taxpayer.

Finally, plaintiff argues that defendant failed to provide proper notice of the final tax assessment because defendant failed to send a copy of that document to plaintiff's Michigan accountant, Carol Andrews. Plaintiff relies on MCL 205.8; MSA 7.657(8), which provides:

If a taxpayer files with the department a written request that copies of letters and notices regarding a dispute with the taxpayer be sent to the taxpayer's official representative, the department shall send the official representative, at the address designated by the taxpayer in the written request, a copy of each letter or notice sent to that taxpayer. A taxpayer shall not designate more than 1 official representative under this section for a single dispute.

Plaintiff contends that Andrews prepared and filed a power of attorney form that authorized her to represent plaintiff regarding single business tax matters. Therefore, plaintiff argues that defendant should have sent a copy of the final assessment to Andrews, as its official representative. The Tax Tribunal concluded, as a factual matter, that Andrews never filed the power of attorney form with defendant. If the Tax Tribunal's findings of fact are supported by competent, material and substantial evidence on the whole record, they must be considered final. *Bickler, supra* at 210. The Tax Tribunal based its decision on the following factors: (1) defendant's files did not contain the power of attorney form, (2) Andrews' files contained no confirmation that she mailed or faxed the form to defendant, and (3) Andrews had no specific recollection that she personally handed the form to defendant's representative at the informal conference. We conclude that the Tax Tribunal's factual conclusion is supported by the requisite evidence on the whole record.

Furthermore, Andrews' presence at the informal conference did not entitle her to receipt of the final assessment. The administrative rules govern the informal conference procedure and the proper methods for notifying the taxpayer of the results of that conference:

The department shall send, to the taxpayer, by certified mail if the taxpayer is not represented, or by first class mail if the taxpayer is represented in the

dispute, a copy of the recommendation, the decision and order, and, if applicable, the rebuttal explanation. If a taxpayer is represented in the informal conference, the department shall send, by certified mail, to the taxpayer representative, a copy of the recommendation, the decision and order, and, if applicable, the rebuttal explanation.

After the decision and order have been issued, *a notice of final assessment shall be sent to the taxpayer*. The notice of final assessment shall include a statement advising the taxpayer of the right to appeal. [1999 AC, R 205.1011(4), (5) (emphasis added).]

The administrative rule clearly provides that the notice of final assessment shall be sent only to the taxpayer, even if the taxpayer was represented at the informal conference. Defendant properly complied with the rule.

Affirmed.

/s/ Kurtis T. Wilder

/s/ Michael R. Smolenski

/s/ William C. Whitbeck